

9.(Twice amended) A process for increasing the lutein concentration in the circulating blood of a companion animal comprising a dog or cat, said process comprising the step of feeding said animal a diet containing from about 1 to about 50 mg/day of lutein for a time sufficient for said lutein to be absorbed into the bloodstream of said animal.

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10.(Twice amended) A process for increasing immunoglobulin concentration in a companion animal comprising a dog or cat, said process comprising the step of feeding said animal a diet containing from about 1 to about 5 mg/day of lutein for a time sufficient for said lutein to be absorbed into the bloodstream of said animal.

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11.(Twice amended) A process for increasing lymphocyte cells in a companion animal comprising a dog or cat, said process comprising the step of feeding said animal a diet containing from about 1 to about 5 mg/day of lutein for a time sufficient for said lutein to be absorbed into the bloodstream of said animal.

12.(Amended) A supplement for enhancing immune response [and improving the overall health] of a companion animal comprising a dog or cat, said supplement comprising, on a dry matter basis, from about 0.001 to about 2% by weight lutein.

REMARKS

In the latest Office Action, the examiner maintained the rejection of claims 1-3 and 8-12 under 35 U.S.C. §112, first paragraph, asserting that the specification is enabling for cats and dogs, but not all companion animals. Accordingly, with this amendment, independent claims 1, 9, 10, 11 and 12 have been amended to recite that the companion animals comprise dogs or cats.

With regard to claim 8, the Examiner maintains that the specification does not provide any direction as to how to calculate a crude protein, and concludes that "it would require undue experimentation to make the invention based on the content of the disclosure". However, as previously pointed out, the term "crude protein" is well known in this art. Applicant submits

herewith copies of documents obtained using the Internet which show the known calculation of crude protein in animal food. One skilled in the art would certainly know what is meant by this term. Accordingly, claims 1-3 and 8-12 as amended are believed to be in compliance with §112.

Claims 1-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jyonouchi et al. in view of Anon. The Examiner maintains that one skilled in the art would have found it obvious to use lutein for improving immune response as taught in Jyonouchi et al. in the form of a supplement as taught by Anon et al. While the Examiner concedes that neither of the references teach or suggest the claimed dosage, she asserts that it would have been obvious to “optimize amounts in order to achieve effective results”. However, as previously pointed out, neither Jyonouchi et al. nor Anon teach or suggest the administration of a lutein supplement to companion animals such as dogs or cats as now claimed. Jyonouchi et al. are directed to the effects of lutein on mice, while Anon teaches a dietary supplement containing lutein, presumably for human consumption. Neither mouse nor human physiology is the same as dog or cat physiology.

The Examiner has taken the position that the demonstration of lutein’s effectiveness in mice as taught by Jyonouchi allows one to presume that lutein would have the same effect “in any warm blooded animal”. However, this is in direct contrast to the Examiner’s earlier statement that “the specification, while being enabling for cats and dogs, does not reasonably provide enablement for all companion animals” and that “the determination of additional species for which the claimed processes and compositions would be useful would require undue experimentation”. Clearly, there is no teaching or suggestion in either Jyonouchi et al. or Anon which would lead one skilled in the art to have a reasonable expectation that the administration of lutein to dogs or cats would result in an enhanced immune response. Nor is there any teaching or suggestion in Jyonouchi et al. or Anon which would lead one skilled in the art to administer a lutein supplement to dogs or cats in the claimed amounts. Thus, there is neither the suggestion to administer lutein to cats and dogs, nor any reasonable expectation of success found in the prior art.

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For all of the above reasons, applicant submits that claims 1-12, 14 and 16, as amended, are in condition for allowance. Early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,

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